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No. ——— OFFICE OF THE CLERK

In The

Supreme Court of the United States

RICHARD C. MOENNING,

Petitioner,

v.

ILLINOIS COMMERCE COMMISSION and COMMONWEALTH EDISON,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Illinois

PETITION FOR A WRIT OF CERTIORARI

RICHARD C. MOENNING
Counsel of Record

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44PP

QUESTION PRESENTED

Whether the final decision of the Illinois Commerce Commission which dismissed petitioner's complaint as a matter of law and with prejudice over petitioner's objection that it lacked such statutory jurisdiction and was required to conduct an evidentiary hearing and to determine facts, may be reviewed pursuant to 28 U.S.C. Section 1257, as repugnant to the Fourteenth Amendment of the federal Constitution that guarantees due process where, the Illinois Commerce Commission and the regulated public utility further combine to assert the Illinois Appellate Court has no subject matter jurisdiction to review its final decision.

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PETITION FOR A WRIT OF CERTIORARI

Richard C. Moenning respectfully petitions for a writ of certiorari to the Supreme Court of Illinois to review the judgment of the Illinois Commerce Commission, served September 25, 1998, in Docket No. 97-0528.

OPINIONS BELOW

Judicial review was denied by the Supreme Court of Illinois (185 Ill. 2d 631), and by the Illinois Appellate Court, First District. There are no reported opinions.

JURISDICTION

The Supreme Court of Illinois denied Leave to Appeal As A Matter of Right (Docket No. 87680), October 6, 1999, and, denied Petitioner's Motion for Leave to file a Motion for Reconsideration of the order denying petition for leave to appeal, November 16, 1999. Justice John Paul Stevens granted petitioner's Application for Extension of Time, January 10, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(a).

STATUTORY PROVISIONS INVOLVED

Section 10-201 of the Public Utility Act (220 ILCS 5/10-201) provides for judicial review of Illinois Commerce Commission decisions to the Illinois Appellate Court. Illinois Constitution, Article 6, Section 6, grants the Illinois Appellate Court such powers of direct review

of administrative action as provided by law (735 ILCS 5/3-113); and Rule 335 of the Supreme Court of Illinois directs the procedure for a statutory direct review of orders of an administrative agency by the Appellate Court, including Rule 303(d).

STATEMENT

Without a hearing, or other due process of law, Commonwealth Edison, a regulated public utility (respondent Edison), imposed a $150.00 penalty for continued electrical service to petitioner. Petitioner, an established customer from 1971, complained to the Illinois Commerce Commission (respondent Commission) which advised respondent Edison had the right to impose its penalty.

Petitioner filed a formal complaint with respondent Commission (Docket No. 97-0528). Respondent Edison objected to the complaint and moved to dismiss as a matter of law with prejudice. Over petitioner's objections to the Commission of the Hearing Examiner's *ex parte* communications, denial of discovery, the refusal to conduct an evidentiary hearing, the disregarding of an offer of proof, the Hearing Examiner's proposed recommended action in violation of federal and state constitutional due process, and marking the case "Heard and Taken", the complaint was dismissed. The Commission found "no compelling evidence presented . . . and . . . the allegations and arguments presented by Complainant in both his Response to the Motion to Dismiss as well as his Brief on Exceptions amount to groundless assertions, . . . clearly

without merit, and must be rejected."[1] The Commission summarily denied petitioner's statutory verified application For Reconsideration, served November 20, 1998, as raising nothing further. (App. 9)

Petitioner filed a Notice of Appeal with respondent Commission's Clerk, December 18, 1998, who docketed the appeal, December 22, 1998. The clerk returned a copy of the Notice of Appeal, December 22, 1998; and, on receipt of a copy of the Notice of Appeal filed stamped December 18, 1998, on December 24, 1998, petitioner filed the copy of the Notice of Appeal with the Clerk of the Illinois Appellate Court.[2] The Clerk of the Illinois Appellate Court never docketed the appeal, until January 27, 1999, and only after petitioner timely filed a Petition For Review upon leave of Court under Rule 335, as extended by Rule 303(d).

Respondent Edison moved to dismiss the appeal contending (1) an untimely Notice of Appeal in the Appellate Court, (2) failure to name a necessary party in the untimely Notice of Appeal and (3) an untimely Petition For Review filed with the Appellate Court. Over petitioner's objections, the appeal was dismissed March 29, 1999, without vacating the prior order of January 27, 1999. Petitioner filed a Petition For Rehearing, April 19, 1999, which the Appellate Court denied May 8, 1999.

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[1] Commission Decision, page 4, served September 25, 1998, disposing of all state and federal constitutional objections. (App. 6-7)

[2] There is no evidence of this Notice of Appeal in the Record, only the time stamped Notice of Filing.

Petitioner sought relief in the Supreme Court of Illinois, through issuance of a Supervisory Order, denied June 30, 1999, and on a Petition For Leave to Appeal as of Right, denied October 6, 1999. Petitioner's Motion For Leave to File a Motion For Reconsideration of the denial of Leave to Appeal was denied November 16, 1999. Petitioner has exhausted all recourse to an evidentiary hearing.

REASONS FOR GRANTING THE PETITION

I

THE COMMERCE COMMISSION'S FINAL DECISION EXCEEDS ITS STATUTORY AUTHORITY AND VIOLATES THE FOURTEENTH AMENDMENT.

Petitioner seeks recourse to this Court to redress the respondent Commerce Commission's violation of his Fourteenth Amendment right to due process. 28 U.S.C. § 1257(a). *Howlett v. Rose*, 496 U.S. 356, 366, 110 S.Ct. 2430, 110 L.Ed.2d 332, 347 (1990) is authority that recourse to this Court is proper and appropriate.

> "Whether the constitutional rights asserted by petitioner were 'given due recognition by the [Court of Appeal] is a question as to which the [petitioner is] entitled to invoke our judgment, and this [he has] done in the appropriate way. It therefore is within our province to inquire not only whether the right was denied in express terms, but also whether it was denied in substance and effect, as by putting forward nonfederal grounds of decision that were without any fair or substantial support.' "

Petitioner, like the former student, raised his constitutional claim to due process in his complaint to the Commission. (App. 27) The regulated public utility moved the Commerce Commission without citation to statutory authority to dismiss the complaint. Without taking evidence and often referring to other challenges *de hors* the record, at least 15 years earlier, contrary to Commission's hearing procedure, 83 Illinois Administrative Code CH. III, Section 200.500(d), the complaint was dismissed as a matter of law and with prejudice.

The Illinois Supreme Court decided in *Business and Professional People For the Public Interest v. The Illinois Commerce Commission*, 136 Ill. 2d 192, 555 N.E.2d 693 (1990) and 146 Ill. 2d 175, 195, 585 N.E.2d 1032 (1991) the Commerce Commission is different from a court and has no authority to make decisions except as authorized by legislation. (136 Ill. 2d at 243) Nonetheless, the Commission empowered itself in express terms to dismiss petitioner's complaint as a matter of law thereby taking no evidence to analyze and hear petitioner's federal right to due process. It elected in express terms to make its final decision without an evidentiary hearing to receive evidence, even though absent such authorization, the commission exceeded its jurisdiction with a void order. See also *City of Chicago v. Fair Employment Practices Commission*, 65 Ill. 2d 108, 112-13, 357 N.E.2d 1154 (1976) and *Newkirk v. Bigard*, 109 Ill. 2d 28, 36, 485 N.E.2d 321 (1985).

The granting of certiorari is appropriate and proper since there is no danger this Court would substitute its judgment for that of this administrative agency. The record before the Commission is not long nor filled with complex facts, wisdom, or policy. There is no evidence to

analyze or balance. (App. 27) In *People of the State of New York ex rel. New York & Queens Gas Company v. McCall*, 245 U.S. 345, 62 L.Ed. 337 (1917), this Court citing the same principle as above:

> "It is the result of these and similar decisions, that while in such cases as we have here this court is confined to the Federal question involved, and therefore has not the authority to substitute its judgment for that of an administrative commission as to the wisdom or policy of an order complained of, and will not analyze or balance the evidence which was before the Commission for the purpose of determining whether it preponderates for or against the conclusion arrived at; yet it will, nevertheless, enter upon such an examination of the record as may be necessary to determine whether the Federal constitutional right claimed has been denied; *as, in this case, whether there was such a want of hearing or such arbitrary or capricious actions on the part of the Commission as to violate the due process clause of the Constitution.*" (Emphasis added)

The principle presented in this petition is important and there is no judicial review available to petitioner to redress the denial. As a result of the difficulty of securing judicial review, this case presents this Court with the opportunity to vindicate petitioner's Fourteenth Amendment right to due process requiring state administrative agencies to recognize and give substance to the supremacy of federal constitutional principles in making factual decisions. 21 U.S.C. § 2106.

II

THE RIGHT TO APPEAL AN AGENCY DECISION BELONGS TO THE JUDICIARY

Persons and businesses in the United States are subject to myriad rules and regulations that are derived from authority of Congress and the legislatures of the fifty states. The importance of certiorari in this case is the federal question it raises; yet, also the case presents the perplexing question whether the agency itself ought to control the process of judicial review. The issue is particularly sensitive and important to good government where as here the regulated public utility deprives petitioner of his claim to constitutional due process and the respondent Edison, the regulated public utility, moved to dismiss review of the decision in the judiciary – the Illinois Appellate Court.[3]

Petitioner sought review of respondent Commerce Commission's final decision according to the statutes that authorize the Commission including reference to an appeal process. 220 ILCS 5/10-201 (App. 20-22) See also, 735 ILCS 5/3-113 (App. 22-23) The appeal remained undocketed even after the filing of the timely Notice of Appeal. As the time for appeal expired without the appellate court docketing the appeal, Petitioner, on motion authorizing an extension of time provided by Illinois

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[3] It was respondent Edison that moved the respondent Commission to exceed its jurisdiction and to dismiss petitioner's complaint as a matter of law and with prejudice, citing no requisite statutory authority, and repeatedly referring to previous dockets, and appellate decisions interpreting an altogether different statute.

Supreme Court Rule 303(d), commenced judicial review pursuant to a concurrent procedure provided by Illinois Supreme Court Rule 335. (App. 23-24) In *County of Cook, Cermak Health Services v. Illinois State Local Labor Relations Board*, 144 Ill. 2d 326, 334, 579 N.E.2d 866 (1991), the Court acknowledged concurrent constitutional authority to promulgate procedural rules concerning direct appellate court review of administrative decisions citing *O'Connell v. St. Francis Hospital*, 112 Ill. 2d 273, 492 N.E.2d 1322 (1986).

Without waiting for the respondent Commission, respondent Edison moved to dismiss petitioner's right of review in the Appellate Court claiming the Appellate Court lacked subject matter jurisdiction. But see Appendix 21-22, reciting extensive subject matter jurisdiction. The Appellate Court had docketed the appeal pursuant to Supreme Court Rule 335; and, without vacating its order docketing the appeal, the Appellate Court allowed respondent Edison's motion to dismiss publishing no opinion.[4]

Petitioner comes to this Court as the ultimate defender of Constitutional rights to due process. Here respondents combined at every opportunity to deny petitioner a hearing and vindication of his Fourteenth Amendment right to due process of law.

There is no record to explain the basis of the Appellate Court's reasoning for dismissing the appeal it had

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[4] The irony of the result is that the respondent Commission which exceeds its jurisdiction claims the judiciary lacks subject matter jurisdiction and is able to abort the very constitutional protections which persons and businesses rely on to live with agency government.

just authorized; nor, is there any reason the Supreme Court of Illinois has failed to address the unconstitutional decision of respondent Commerce Commission. See *Business and Professional People For the Public Interest v. The Illinois Commerce Commission,* 136 Ill. 2d 243, 555 N.E.2d 693 (1990) and 146 Ill. 2d 175, 585 N.E.2d 1032 (1991).

The record in this case provides no explanation or reasoning. It is certain nonetheless the power to act is present and evidence. The failure to act to defend the judiciary's traditional role as guardian of individual liberty and constitutional rights from agency encroachment remains an enigma wrapped in a mystery.

The Court should grant certiorari to the Illinois Supreme Court to vacate the orders of the Appellate Court dismissing petitioner's appeal and requiring that Court to proceed to hear petitioner's appeal, and on finding no evidentiary record to vacate and remand the case to the Commerce Commission with directions to conduct a hearing and to find facts pertaining to petitioner's complaint. This Court has the requisite authority pursuant to 28 U.S.C. § 2106 to require a result that is just under the circumstances.

III

THE RESULT IN THE LOWER COURT IS SO CLEARLY ERRONEOUS AN APPROPRIATE ORDER OF REVERSAL IS NEEDED TO VINDICATE FEDERAL SUPREMACY OF THE FOURTEENTH AMENDMENT.

As a result of the Illinois Appellate Court order dismissing petitioner's timely appeal filed in accord with Supreme Court Rule 335, and the subsequent denials of

supervision or other judicial review, the certiorari papers present a simple, uncomplicated record of an agency decision beyond the scope of its jurisdiction. It also shows an agency and its regulated utility combining to avoid a merits disposition by the judiciary.

On the record presented by petitioner's certiorari papers an appropriate vindication of the Fourteenth Amendment right to due process is Rule 16.1 – summary disposition on the merits. Respondent Commerce Commission's final order is plainly beyond its jurisdiction and in violation of its legislative authority.

Respondent Edison in its Motion to Dismiss petitioner's appeal in the Appellate Court fails to mention Supreme Court Rule 303(d) extending the time to file a Petition For Review provided by Rule 335. On the record, the Appellate Court merely allows the respondent Edison's motion without vacating its prior order finding the appeal jurisdictional.

Since vindication of petitioner's Fourteenth Amendment right to due process requires judicial intervention and this Court is the ultimate authority of the supremacy and importance of the principals that administrative agencies shall abide persons whose lives and businesses are impacted by their decisions with constitutional protection of those rights, a simple order of summary reversal directing the decision of the respondent Commission be vacated as a violation of the Fourteenth Amendment to the federal Constitution is appropriate. It likewise is within the best tradition of this Court and its administration of its docket. See *Lawrence v. Chater*, 516 U.S. 163, 116 S.Ct. 604, 133 L.Ed.2d 545 (1996).

This Court should grant petitioner's prayer for certiorari and on the record in this case enter an appropriate order. 28 U.S.C. § 2106.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

RICHARD C. MOENNING,
Counsel of Record

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JUDGMENT SOUGHT TO BE REVIEWED

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Richard Moenning	:	
-vs-	:	**97-0528**
Commonwealth Edison Company	:	
Complaint as to billing in Evanston, Illinois.	:	

ORDER

By the Commission:

On October 17, 1997, Richard Moenning ("Complainant") filed his verified complaint with the Illinois Commerce Commission ("Commission") against Commonwealth Edison Company ("ComEd" or "Respondent") regarding billing to his residence in Evanston, Illinois.

Pursuant to notice as required by the law and the rules and regulations of the Commission this matter came on for hearing before a duly authorized Hearing Examiner at the Commission at its offices in Chicago, Illinois on various dates from November 13, 1997 through July 16, 1998, at which time the record was marked "Heard and Taken."

On March 23, 1997, ComEd filed a Motion to Dismiss. The Hearing Examiners set a briefing schedule providing for Complainant's Response and Respondent's Reply. A copy of the Hearing Examiners' Proposed Order was duly served on the parties. Complainant filed a Brief on Exceptions and ComEd filed a Reply Brief on Exceptions. The

arguments set forth in those pleadings are considered herein.

In his complaint, Complainant alleges that 83 Ill. Adm. Code Parts 280.50, 280.60 and 280.70 regarding security deposits are unlawful. He further contends that the practices of ComEd relating to security deposits are unconstitutional. He asserts that these practices and procedures deprive him and other utility customers of their property interests without due process of law. He contends that these provisions result in systematic and discriminatory classifications involving customers of ComEd. He also asserts that ComEd treats certain records as "confidential" and have refused him access to such records.

ComEd's Motion to Dismiss

In support of its Motion to Dismiss, ComEd sets forth the following arguments: (1) Complainant has failed to raise any contested factual issue; (2) Complainant's challenges to the regulations governing deposits have been fully litigated in previous dockets filed by Complainant at the Commission; and, (3) Complainant's confidentiality claim is without merit. For these reasons, Respondent asserts the complaint should be dismissed.

ComEd states that on July 11, 1997, Complainant's electric service was disconnected, pursuant to 83 Ill. Adm. Code Section 280.130, because Complainant failed to pay the amount due on his account. That same day Complainant paid the amount owed, and his service was reconnected. In accordance with Parts 280.60(e) and 280.70, Complainant was required to pay a security

deposit for continued service. ComEd asserts that the instant complaint does not allege that Complainant's service was discontinued in error. Nor does the complaint allege that such discontinuance violated the Act or any Commission regulation. Respondent further refutes Complainant's confidentiality claim as devoid of any legal basis upon which relief can be granted.

Furthermore, in response to Complainant's claims that the Commission's regulations governing deposits are unconstitutional, ComEd states that Complainant has previously filed two substantially similar complaints, one against ComEd and, the other against Illinois Bell Telephone. (See Orders in Dockets 81-0382, Order dated July 7, 1983 and Docket 83-0475, Order dated November 20, 1984). Respondent posits that in these two cases, the Commission upheld a utility's right to require deposits when a customer's service has been discontinued for non-payment. Moreover, in *Moenning vs. Illinois Bell Telephone Co.*, 139 Ill. App. 3d 521, 487 N.E. 2d 980 (1985), the Illinois Appellate Court upheld the Commission's finding that the security deposit requirement and termination of service did not give rise to a civil rights violation nor did they constitute a due process violation. ComEd asserts that since the Commission and the Illinois Appellate Court have already upheld the Commission's requirements regarding deposits, in particular as they apply to this Complainant, its Motion should be granted.

Complainant's Response to Motion to Dismiss

Mr. Moenning states that ComEd's Motion to Dismiss is defective. He asserts that the Commission is without

authority to grant the requested relief. Complainant cites to Sections 220.500(d) and 220.820 to support his contention that the Commission's rules limit the Commission's authority to dismiss his complaint. He maintains that these provisions contains no authority which allows the Commission to rule on Edison's Motion to Dismiss. Specifically, Complainant argues that the Commission has no authority granted it by the Legislature nor the Administrative Procedure Act to grant the requested relief.

Complainant asserts that the rules and regulations require that the Hearing Examiner only make a recommended or proposed Order after the close of evidentiary hearings. He contends that there has been no evidentiary hearing and that Edison's Motion to Dismiss seeks to avoid an evidentiary hearing. Complaint argues that the Supreme Court has ruled that the Commission is not a court nor does it have the power of a court. For these reasons, Complainant avers that the Commission must deny Edison's Motion to Dismiss.

ComEd's Reply

Respondent filed a Reply Memorandum in response to the assertions of Complainant. Respondent argues that Complainant is mistaken that the Commission does not have authority to grant ComEd's Motion to Dismiss. The Company argues that it properly brought its motion as explicitly authorized under Section 200.190(a) of the Commission Rules of Practice. ComEd asserts that its motion is proper and the complainant should be dismissed. Moreover, Respondent maintains that Complainant completely ignores Section 200.190(f), which further

demonstrates that the Commission has the authority to enter an Order granting a Motion to Dismiss.

ComEd also refutes Complainant's contention that Section 200.550(d) and 200.820 of the Commission's rules somehow limit the Commission's authority to dismiss the Complaint. The Company maintains that these sections are inapplicable to the instant situation.

Furthermore, ComEd cites *Chesterfield-Medora Telephone vs. Illinois Commerce Commission*, 37 Ill.2d 324, 328, 226 N.E. 2d 855,858 (1967), in support of its assertion that the Commission is not required to hold evidentiary hearings upon the filing of complaint. Thus, in this instance, where Complainant has failed to state a cognizable claim in his complaint, evidentiary hearings are neither required nor appropriate. Respondent maintains that the Commission may properly dismiss this matter for want of jurisdiction.

Additionally, ComEd takes issue with Complainant's allegation that ComEd violated Section 280.160 by claiming that its records are confidential. Respondent states that neither Section 280.160 nor any other Commission Rule or applicable statute requires ComEd to give Complainant unfettered access to its business records. Moreover, in response to Complainant's discovery requests, ComEd states that it has provided Complainant every relevant business record that he sought relating to the discontinuance in question in this proceeding.

Respondent further responds to Complainant's suggestion that ComEd is attempting to shift the burden of proof to the Complainant. ComEd maintains that it is well established that the burden of proof in a complaint

case is on the Complainant. *Antioch Milling Co. v. Public Service Co. of Northern Ill.*, 4 Ill. 2d 200, 209, 123 N.E. 2d 302, 307 (1954). Respondent argues that Complainant has failed to allege any statute, rule or regulation that ComEd has violated, and has therefore, failed to sustain his burden.

In sum, for the aforementioned reasons ComEd requests that the Commission grant its Motion to Dismiss the instant complaint and enter an order dismissing the complaint with prejudice.

Commission Analysis and Conclusion

The record in this matter shows that Complainant's electric service was disconnected for non-payment of his bill. In accordance with Sections 280.50 and 280.70, ComEd required Complainant to pay a deposit to have his service reconnected. This evidence is uncontroverted and we find that Respondent's request for a deposit was proper and conformed to the law and the rules and regulations of the Commission. We further conclude that there are no outstanding issues of fact regarding the instant complaint.

The Commission is mindful that Complainant has filed several complaints before the Commission in the past. We find that the Orders entered in those dockets, involve a thorough review of the same allegations and issues challenging the regulations governing deposits presented as in the instant complaint. We find no compelling evidence presented in this complaint that would cause us to revisit those issues. We are of the opinion that the allegations and arguments presented by Complainant

in both his Response to the Motion to Dismiss as well as his Brief on Exceptions amount to groundless assertions, are clearly without merit, and must be rejected.

Moreover, we find the arguments advanced by the Company compelling. Complainant has clearly not presented a cognizable complaint as required by 83 Ill. Adm. Code Section 200.170(c). As such, we find Respondent's Motion to Dismiss proper and in accordance with Section 200.190 (a). We are of the opinion that there remain no outstanding issues of fact or law regarding the instant complaint. We therefore conclude that Respondent's Motion to Dismiss may properly be granted and this matter dismissed with prejudice.

IT IS THEREFORE ORDERED that the Motion to Dismiss filed by Commonwealth Edison Company on March 23, 1998 may properly be granted and the Complaint filed by Richard Moenning on October 15, 1997 against Commonwealth Edison Company, be and the same is, hereby dismissed with prejudice.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 23rd day of September, 1998.

(SIGNED) RICHARD L.
MATHIAS
Chairman

(SEAL)

Docket No: 97-0528
Bench Date: 11/16/98
Deadline: 11/17/98

MEMORANDUM

TO:	The Commission
FROM:	Mark Goldstein and Erin M. O'Connell, Hearing Examiners
DATE:	November 12, 1998
SUBJECT:	Richard Moenning -vs- Commonwealth Edison Company Complaint as to billing in Chicago, Illinois.
RECOMMENDATION:	Deny Application for Rehearing.

On October 28, 1998, Richard Moenning ("Complainant") filed an Application for Rehearing ("Application") of the Commission's Order entered September 23, 1998 denying his complaint against Commonwealth Edison Company.

In his Application, Complainant asserts four bases to support his contention that rehearing must be granted. He avers that the Order as entered is not supported by substantial evidence, beyond the scope of the Commission's jurisdiction, violates the Illinois Public Utilities Act ("the Act") and the due process clauses of the United States and Illinois Constitutions and furthermore violates the Commission's Rules of Practice.

In accordance with Section 110-113 (a) of the Act, Complainant was required to file his application for rehearing within 30 days after service of the Commission's Order. The Order in this docket was served on the parties on September 25, 1998. Any applications for rehearing were required to be filed by October 26, 1998. Complainant's Application was filed October 28, 1998. We conclude under Illinois law, Complainant's Application was filed two days late and is, therefore, untimely and on that basis alone should be barred.

Nevertheless, turning to the merits of Complainant's Application, we find that the arguments set forth therein are merely reassertions of arguments which have been thoroughly considered and rejected by the Commission in its Order. For these reasons, we recommend that Complainant's Application be denied.

EOC:jt

STATE OF ILLINOIS
[SEAL]
ILLINOIS COMMERCE COMMISSION

November 20, 1998

RICHARD C. MOENNING	:	
-VS-	:	97-0528
COMMONWEALTH EDISON COMPANY	:	Pamela B. Strobel Vice President & General Counsel Commonwealth Edison Company P.O. Box 767 Chicago, IL 60690-0767
Complaint as to billing in Evanston, Illinois.	:	
Richard C. Moenning 135 S. LaSalle St., Ste. 3600 Chicago, IL 60603	:	

Paul F. Hanzlik
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CERTIFICATE OF COMMISSION ACTION

Dear Sir/Madam:

Notice is hereby given that the Commission in conference on November 17, 1998, **HAS ENTERED AN ORDER TO DENY** the Verified Application for Rehearing filed on behalf of Richard Moenning on October 28,

1998 of the Order entered on September 23, 1998 and served on September 25, 1998.

Sincerely,

/s/ Donna M. Caton
Donna M. Caton
Chief Clerk

da
Hearing Examiners: Ms. O'Connell & Mr. Goldstein

OTHER RELEVANT ORDERS

IN THE APPELLATE COURT, STATE OF ILLINOIS
FIRST DISTRICT

Richard C. Moenning	)	
Petitioner	)	
v.	)	No. 99-0232
Illinois Commerce Commission and Commonwealth Edison	)	
Respondents	)	

ORDER

On the Motion of Richard C. Moenning for Leave to Appeal pursuant to Rule 303(E) and to File a Petition for Review as of December 24, 1998, due notice given and the Court considering the circumstances explaining the late filing of the Petition for Review pursuant to Rule 335

It is Ordered the Motion is (Allowed) (~~denied~~) The Clerk is directed to proceed accordingly.

(Entered Jan. 27, 1998)

Name Richard C. Moenning
Attorney for Petitioner
Address 135 S. LaSalle St #3600
City Chicago ILL 60603
Telephone 312 263 0062

/s/ Calvin C. Campbell
Justice

_____
Justice

_____
Justice

GILBERT S. MARCHMAN, CLERK OF THE APPELLATE COURT, FIRST DISTRICT

No. 99-0232

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RICHARD C. MOENNING Complainant-Appellant, v. ILLINOIS COMMERCE COMMISSION and COMMONWEALTH EDISON COMPANY, Respondent-Appellees.	)	Petition For Review of Order of Illinois Commerce Commission Case No. 97-0528

ORDER

This matter having come to be heard on Commonwealth Edison Company's, motion, all parties having been duly notified, and the Court being advised in the premises,

IT IS HEREBY ORDERED:

That Commonwealth Edison Company's motion to dismiss the appeal is allowed/~~denied~~.

/s/ Calvin C. Campbell
Presiding Justice

/s/ Patrick J. Quinn
Justice

/s/ Robert Chapman Buckley
Justice

ORDER ENTERED

Dated: MAR 29 1999 APPELLATE COURT, FIRST DISTRICT

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Attorneys for Respondent-Appellee
Commonwealth Edison Company

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

RICHARD C. MOENNING, Petitioner-Appellant, v. ILLINOIS COMMERCE COMMISSION and COMMONWEALTH EDISON COMPANY, Respondents-Appellees.	)	No. 1-99-0232

ORDER

Upon consideration of the Petition for Rehearing filed by Petitioner-Appellant, RICHARD C. MOENNING, on April 19, 1999, for reconsideration of this Court's March 29, 1999, order allowing appellee's motion to dismiss,

IT IS HEREBY ORDERED that said Petition for Rehearing is ~~ALLOWED~~/DENIED.

/s/ Calvin C. Campbell
JUSTICE

/s/ Patrick J. Quinn
JUSTICE

/s/ Robert Chapman Buckley
JUSTICE

ORDER ENTERED
MAY 07 1999
APPELLATE COURT, FIRST DISTRICT

[SEAL]
SUPREME COURT OF ILLINOIS
SUPREME COURT BUILDING
SPRINGFIELD 62701

JULEANN HORNYAK
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June 30, 1999

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135 S. LaSalle Street, Suite 3600
Chicago, IL 60603

In re: Richard C. Moenning, movant, v. Hon. Calvin C. Campbell, et al., etc., respondents.
No. 87681

Today the following order was entered in the captioned case:

Motion by movant for a supervisory order. Motion Denied.

Very truly yours,

/s/ Juleann Hornyak
Clerk of the Supreme Court

cc: Hon. Robert C. Buckley
Hon. Calvin C. Campbell
Mr. John P. Kelliher
Hon. Morton Zwick
Hon. Patrick J. Quinn
Mr. John C. Ford

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT

87680

SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

October 6, 1999

Mr. Richard C. Moenning
135 S. LaSalle Street, Suite 3600
Chicago, IL 60603

No. 87680 – Richard C. Moenning, petitioner, v. Illinois Commerce Commission et al., respondents. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 28, 1999.

[SEAL]

SUPREME COURT OF ILLINOIS
SUPREME COURT BUILDING
SPRINGFIELD 62701

JULEANN HORNYAK
CLERK OF THE COURT
(217) 782-2035

FIRST DISTRICT OFFICE
20TH FLOOR
160 NO. LASALLE ST.
CHICAGO 60601
(312) 793-1332

TELECOMMUNICATIONS
DEVICE
FOR THE DEAF
(217) 524-8132

TELECOMMUNICATIONS
DEVICE
FOR THE DEAF
(312) 793-1333

November 16, 1999

Mr. Richard C. Moenning
135 S. LaSalle Street, Suite 3600
Chicago, IL 60603

TODAY THE FOLLOWING ORDER WAS ENTERED:

No. 87680 – Richard C. Moenning, petitioner, v. Illinois Commerce Commission et al., respondents. Motion by petitioner, pro se, for leave to file a motion for reconsideration of the order denying petition for leave to appeal. Motion *denied*.
Order entered by the Court. Rathje, J., took no part.
Mandate has issued forthwith to the Appellate Court, First District.

cc: Mr. John P. Kelliher
Mr. John C. Ford

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

January 10, 2000

Mr. Richard Moenning
135 South LaSalle St.
Suite 3600
Chicago, IL 60603

re: Richard Moenning
v. Illinois Commerce Commission, et al.
Application No. 99A563

Dear Mr. Moenning:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Stevens, who on January 10, 2000, extended the time to and including February 8, 2000.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTER, Clerk
By

/s/ Sandra Elliott Spagnolo
Sandra Elliott Spagnolo
Assistant Clerk

MATERIAL REQUIRED BY SUBPARAGRAPH .1(f)

CONSTITUTION AND STATUTES INVOLVED

ILLINOIS CONSTITUTION, ARTICLE 6, SECTION 6:

* * * * The Appellate Court shall have such powers of direct review of administrative action as provided by law.

The Public Utility Act, Section 10-201 (220 ILCS 5/10-201):

(a) Jurisdiction. Within 35 days from the date that a copy of the . . . decision sought to be reviewed was served upon the party affected . . . , any person . . . may appeal to the appellate court of the judicial district in which the subject matter of the hearing is situated,. . . .

(b) Pleadings and Record. . . . The party taking such an appeal shall file with the Commission written notice of appeal. The Commission, upon the filing of such notice of appeal, shall, within 5 days thereafter, file with the clerk of the appellate court to which such appeal is taken a certified copy of the order appealed. . . . The party serving such notice of appeal shall, within 5 days after the service of such notice upon the Commission, file a copy of the notice, with proof of service, with the clerk of the court to which such appeal is taken, and thereupon the appellate court shall have jurisdiction over the appeal. . . .

* * * *

(e) Powers and duties of Reviewing Court:

(i) An appellate court to which any such appeal is taken shall have the power, and it shall be its duty, to hear and determine such appeal with all convenient speed. Any proceeding in any court in this State directly affecting a rule, regulation, order or decision of the Commission, or to which the Commission is a party, shall have priority in hearing and determination over all other civil proceedings pending in such court, excepting election contests.

(ii) If it appears that the Commission failed to receive evidence properly proffered, . . . the court shall remand the case, in whole or in part, to the Commission with instructions. . . .

(iii) If the court determines that the Commission's . . . decision does not contain findings or analysis sufficient to allow an informed judicial review thereof, the court shall remand . . . the decision, in whole or in part, with instructions. . . .

(iv) The court shall reverse a Commission . . . decision, . . . , if it finds that:

A. The findings of the Commission are not supported by substantial evidence based on the entire record of evidence . . . ; or

B. The . . . decision is without the jurisdiction of the Commission; or

C. The . . . decision is in violation of the State or federal constitution or laws; or

D. The proceedings or manner by which the Commission considered and decided its . . . decision were in

violation of the State or federal constitution or laws, to the prejudice of the appellant.

* * * *

Article III. Administrative Review Law (735 ILCS 5/3-101 et.seq.):

Section:

5/3/101. Definitions

5/3/102. Scope of Article

5/3/103 Commencement of Action

5/3/104 Jurisdiction and venue

5/3/105 Service of Summons

5/3/106 Appearance of Defendants

5/3/107 Defendants

5/3/108 Pleadings and Record on Review

5/3/109 Costs of preparing and certifying record of proceedings before agency.

5/3/110 Scope of Review

5/3/111 Powers of Circuit Court

5/3/112 Appeals

5/3/113 Direct Review of Administrative orders by the Appellate Court:

(a) Unless another time is provided specifically by the law authorizing the review, an action for direct review of a final administrative decision of an administrative agency by the appellate court shall be commenced

by the filing of a petition for review in the appellate court within 35 days from the date that a copy of the decision sought to be reviewed was served. . . .

(b) The petition for review shall be filed in the appellate court and shall specify the parties seeking review and shall designate the respondent and the order . . . to be reviewed. The agency and all other parties of record shall be named respondents. . . .

RULE 335. Direct Review of Administrative Orders by the Appellate Court

The procedure for a statutory direct review of orders of an administrative agency by the appellate Court shall be as follows:

(a) The Petition for Review. The petition for review shall be filed in the Appellate Court and shall specify the parties seeking review and shall designate the respondent and the order or part thereof to be reviewed. The agency and all other parties of record shall be named respondents. The form of the petition shall be as follows:

IN THE APPELLATE COURT OF ILLINOIS
FOR THE _____ DISTRICT

[Name of Petitioner] Petitioner, v [Names of Agency and Other Parties of Record]* Respondent.	Petition for Review of Order of the [Name of Agency] And Docket Number

[Name of Petitioner] hereby petitions the Court for review of the order [or part of the order] of the [name of Agency] which [describes the order or part as to which review is sought] entered on _____, 19__

_____

Attorney for Petitioner
Address:

---

* If the other parties of record are numerous, they may be listed on a separate page instead of in the caption.

* * *

(i) Application of other Rules and Administrative Review Law.

(1) Insofar as appropriate, the provisions of Rules 301 through 373 (except for Rule 326) are applicable to proceedings under this rule. As used in any applicable rule, the term "appellant" includes a petitioner and the term "appellee" includes a respondent in proceedings to review or enforce agency orders.

(2) Section 3-101, 3-108(c), 3-109, 3-110, and 3-111 of the Code of Civil Procedure are applicable to proceedings to review orders of the agency. The Appellate Court has all of the powers which are vested in the Circuit Court by the above enumerated sections.

* * *

RULE 383. Appeals from Final Judgment of the Circuit Courts in Civil Cases

* * *

(d) Extension of Time in Certain Circumstances. On motion supported by a showing of reasonable excuse for failure to file a notice of appeal on time accompanied by the proposed notice of appeal and the filing fee, filed in the reviewing court within 30 days after expiration of the time for filing a notice of appeal, the reviewing court may grant leave to appeal and order the clerk to transmit the notice of appeal to the trial court for filing.

* * *

83 ILLINOIS ADMINISTRATIVE CODE

SUBPART D: HEARING PROCEDURE

Section 200.500 Authority of Hearing Examiner

The Hearing Examiner shall have authority over the conduct of a proceeding and the responsibility for submission of the matter to the Commission for decision. The Hearing Examiner shall have those duties and powers necessary to these ends, consistent with applicable statutes and Commission rules and policies, including the following:

* * *

d) To rule upon all objections, motions and petitions which do not result in the final determination of the proceeding, and to receive evidence.

* * *

MATERIAL REQUIRED BY RULE 14.1(g)(i)

Petitioner's Formal Complaint to
Illinois Commerce Commission

* * *

8. Sections 280.50, 280.60, and 280.70 are unconstitutional in that such practices and procedures deprive complainant and other public utility customers of their property interests without due process of law and by systematic and discriminatory classifications, practices and procedures.

* * *

Page 3, "Richard C. Moenning's Response in Opposition To Commonwealth Edison's Motion For Dismissal of Complaint." Docket Entry, Vol. 1, C-00160 June 26, 1998:

Thus, Section 200.500 (d) proscribes action by the Hearing Examiners on motions which result in a final determination. So there is no mistake, Edison asks for final relief beyond the Commission's authority or jurisdiction by statute. . . . Since the legislature has never given the commerce Commissioner Edison, a regulated body, authority to dismiss any complaint with prejudice prior to an evidentiary hearing, Edison's motion must be denied.

Final Order of Commission, served September 25, 1998, page 2 – Appendix Item (i) herein.

OTHER ESSENTIAL MATERIAL

The Docket of the Illinois Commerce Commission in 97-0528 contains no entry respecting an evidentiary hearing.